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FILED 08 JUN '11 15:36 USDC-ORP

Attorney for Plaintiff LaCrosse Footwear, Inc.

ORIGINAL

UNITED STATES DISTRICT COURT
DISTRICT OF OREGON
PORTLAND DIVISION

CV '11 - 694 - ~~HA~~ H2

LACROSSE FOOTWEAR, INC., a
Wisconsin corporation,

Plaintiff,

v.

PRO LINE MANUFACTURING CO.
LLC, a New Jersey corporation,

Defendant.

No.

**COMPLAINT FOR TRADE DRESS
INFRINGEMENT**

NATURE OF THIS ACTION

1. Plaintiff LaCrosse Footwear, Inc. ("LaCrosse" or "Plaintiff") seeks injunctive relief, damages and attorneys' fees resulting from the marketing, distribution, and sale by Pro Line Manufacturing Co., LLC ("Defendant"), through retail and Internet channels, of boots (the "Infringing Products") featuring a design (the "Infringing Design") that infringes LaCrosse's distinctive trade dress design associated with its popular boot design.

THE PARTIES

2. LaCrosse is a Wisconsin corporation with its headquarters in Portland, Oregon.

1- COMPLAINT

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3. On information and belief, Defendant is a New Jersey corporation with its headquarters in Wayne, New Jersey.

4. On information and belief, Defendant does business within the District of Oregon through advertising, marketing and sales of products to consumers in this district.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over the claims alleged herein pursuant to 28 U.S.C. §§ 1331 (federal question), 1367 (supplemental), 1338(a) (trademark), and 1338(b) (related claims of unfair competition).

6. Venue is proper in this District under 28 U.S.C. § 1391(b).

7. The Court has personal jurisdiction over Defendant because Defendant does business in this District. Further, Defendant knew or reasonably should have known that the conduct alleged in this Complaint would cause injury to LaCrosse in the State of Oregon.

LACROSSE AND ITS INTELLECTUAL PROPERTY RIGHTS

8. LaCrosse has provided performance footwear to consumers since 1897. LaCrosse has generated significant good will in connection with its products, and the LaCrosse name is synonymous with superior craftsmanship.

9. Since at least as early as Fall, 2009, LaCrosse has continuously offered and sold a rubber hunting boot featuring a nylon fabric lining that extends above the top of the rubber, a black pull-string closure system at the top of the lining, a contrasting black toe cap, a narrowed ankle fit, a contrasting black seam running from heel and arching the ankle, a contrasting black calf band extending down the shin and stopping short of the top of the foot, a contrasting brown layer running around entire boot ("Trade Dress"). A photograph of LaCrosse's rubber boot featuring the Trade Dress is found below:



10. Since LaCrosse's introduction of its boots featuring the Trade Dress in 2009, LaCrosse has continuously promoted and marketed boots featuring the Trade Dress throughout the United States. Due to the popularity of LaCrosse's boots, the Trade Dress has acquired a significant level of distinctiveness.

11. LaCrosse engages in extensive advertising in which the distinctive Trade Dress of its boots is highlighted.

12. Consumers have come to associate boots having the distinctive, non-functional appearance of the Trade Dress with LaCrosse.

DEFENDANT'S INFRINGING ACTIVITIES

13. Defendant offers footwear products through a web site (www.prolineboots.com), trade shows, and through a network of distributors and authorized retailers.

14. Defendant has offered, and on information and belief continues to offer, the Infringing Products featuring trade dress that is confusingly similar to LaCrosse's Trade Dress (the Infringing Design) through a network of distributors and authorized retailers, including

distributors and retailers in this District. Photographs of the Infringing Product and LaCrosse's boot featuring the Trade Dress follow:



15. LaCrosse has never authorized the Defendant to use its Trade Dress with any goods or services.

16. LaCrosse has attempted to convince Defendant to cease and desist its marketing and sale of the Infringing Products. Defendant has not ceased such marketing and sale.

CAUSES OF ACTION

COUNT I: TRADE DRESS INFRINGEMENT (Violation of the Lanham Act, 15 U.S.C. § 1125(a))

17. LaCrosse incorporates by reference paragraphs 1-16.

18. Defendant's actions constitute the use in interstate commerce of a false designation of origin, false or misleading description of fact, or false or misleading representation of fact that are likely to cause confusion or mistake regarding the source of the Infringing Product and LaCrosse's products, or to deceive as to the affiliation, connection, or association of Defendant with LaCrosse, or as to the origin, sponsorship, or approval of the

Infringing Product provided by Defendant in violation of Section 43(a) of the Lanham Act, 15 U.S.C. § 1125(a).

19. Defendant's manufacture, use, sale, and offer to sell the Infringing Product employing a design confusingly similar to the Trade Dress constitutes a false designation of the origin of the Infringing Product.

20. Defendant knew or should have known of LaCrosse's rights, and Defendant's false designation of origin has been knowing, willful and deliberate, making this an exceptional case within the meaning of 15 U.S.C. § 1117.

21. LaCrosse has been, and continues to be, damaged by such acts in a manner that cannot be fully measured or compensated in economic terms, and LaCrosse has no adequate remedy at law. Defendant's acts have damaged, and threaten to continue to damage, LaCrosse's reputation and goodwill.

22. Defendant's infringement will continue unless enjoined by this Court.

COUNT II: COMMON LAW TRADEMARK INFRINGEMENT

23. LaCrosse incorporates by reference paragraphs 1 - 22.

24. The Trade Dress is enforceable trade dress owned by LaCrosse.

25. Defendant's use of the Infringing Design, confusingly similar to the Trade Dress, is likely to confuse a significant number of customers into believing that Defendant or Defendant's Infringing Product is sponsored by or are otherwise associated with LaCrosse or that the parties' products come from a common source.

26. Defendant knew or should have known of LaCrosse's rights in the Trade Dress, and Defendant has knowingly, willfully and deliberately used the Infringing Design in violation of LaCrosse's rights.

27. Defendant's use of the Infringing Design constitutes trade dress infringement under the common law of the State of Oregon.

28. LaCrosse has been, and continues to be, damaged by such acts in a manner that cannot be fully measured or compensated in economic terms. Defendant's acts have damaged and threaten to continue damaging LaCrosse's reputation and goodwill. Defendant's infringement will continue unless enjoined by this Court.

**COUNT III: UNLAWFUL TRADE PRACTICES
(Violation of ORS 646.608)**

29. LaCrosse hereby incorporates by reference paragraphs 1- 28.

30. The foregoing acts of Defendant are likely to cause confusion or misunderstanding as to the source, sponsorship, approval, or certification of goods and services that are Plaintiffs', in violation of ORS 646.608(1)(b). Defendant's actions are further likely to cause confusion or misunderstanding as to affiliation, connection, or association with, or certification by Plaintiff, in violation of ORS 646.608(1)(c).

31. As a result of Defendant's conduct, LaCrosse has been injured in its business and property in the State of Oregon.

32. LaCrosse has been damaged, and the Defendant has been unjustly enriched, by such acts in an amount to be proven at trial.

33. LaCrosse is entitled to its reasonable attorneys' fees pursuant to ORS 646.638(3).

JURY DEMAND

LaCrosse demands a trial by jury of all issues so triable.

PRAYER FOR RELIEF

Plaintiff LaCrosse seeks the following relief:

1. An award of compensatory damages, including consequential and incidental damages, in an amount to be proved at trial.
2. An award of statutory and punitive damages as allowed by law.

3. An award of enhanced damages or profits, whichever is proven greater, pursuant to section 35 of the Lanham Act, 15 U.S.C. § 1117, Oregon State common law and as otherwise provided by law.

4. An accounting and an award to LaCrosse of Defendant's profits, gains, or unjust enrichment in an amount to be proved at trial.

5. An accounting of all products, and all orders for products, in Defendant's possession, custody or control containing the Infringing Design or relating to the Infringing Product.

6. An accounting of all Defendant's receipts and disbursements, profit and loss statements and other financial materials, statements and books relating to Defendant's importation, distribution, marketing or sale of any product containing, or imported, distributed, marketed or sold in connection, with the Infringing Design.

7. An award of attorneys' fees and costs.

8. An award of prejudgment and post-judgment interest at the maximum rate allowed by law.

9. A preliminary and permanent injunction pursuant to 15 U.S.C. § 1116 enjoining Defendant, all agents, servants and employees of Defendant, and all those in active concert or participation with Defendant, from:

- a.) using, or inducing or enabling others to use, the Infringing Design or any reproduction, counterfeit, copy, or colorable imitation of Plaintiff's Trade Dress in any manner in connection with the manufacture, printing, distribution, advertising, offering for sale or sale of any goods or merchandise;
- b.) using, or inducing or enabling others to use, the Infringing Design or any reproduction, counterfeit, copy, or colorable imitation of Plaintiff's Trade Dress in any manner likely to cause others falsely to believe that any products or services imported, distributed, marketed, offered or sold by Defendant are connected with LaCrosse when they are not;

- c.) passing off, inducing, or enabling others to sell or pass off as authorized any products or services that are not authorized by LaCrosse;
- d.) committing any other acts calculated to cause purchasers falsely to believe that Defendant's products or services are authorized by LaCrosse;
- e.) importing, exporting, shipping, delivering, distributing, transferring, returning, holding for sale, destroying, or otherwise moving, storing or disposing of any Infringing Products or any other item or product bearing or used to reproduce any unauthorized reproduction, counterfeit, copy or colorable imitation of Plaintiff's Trade Dress;
- f.) destroying, transferring, altering, moving, returning, concealing, or in any manner secreting any and all counterfeit products, and any and all computer tapes or disks, business records, documents, emails, supplier names and addresses, order histories, books of accounts, receipts, specifications, packaging and containers and other documentation relating or referring in any way to the manufacture, acquisition, assembly, distribution, advertisement, promotion, offer for sale or sale of any goods or merchandise incorporating any unauthorized reproduction, counterfeit, copy or colorable imitation of the Infringing Design, or otherwise infringing LaCrosse's intellectual property rights; and
- g.) unfairly competing with LaCrosse.

10. An order pursuant to 15 U.S.C. § 1116 providing for the seizure and impoundment of all products claimed to have been made or used in violation of LaCrosse's exclusive rights, including without limitation all Infringing Products, and an order for the destruction of all copies found to have been made or used in violation of LaCrosse's exclusive rights.

11. An order requiring Defendant to file with the Court and serve upon LaCrosse within ten (10) days after the issuance of any injunction a written report, under oath, setting forth in detail the manner and form in which Defendant has complied with the injunction. And,

12. Such other relief as the Court deems just and proper.

DATED: June 8, 2011

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